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Supreme Court of the United States

October Term, 1977

No. ---- 77-1737

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON AND HARMON OXFORD,
Appellants,

vs.

THE STATE OF TEXAS,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

JURISDICTIONAL STATEMENT 1

OPINIONS BELOW 2

JURISDICTION 2

STATUTE INVOLVED 3

QUESTIONS PRESENTED 3

STATEMENT OF THE CASE 5

THE QUESTIONS ARE SUBSTANTIAL 8

CONCLUSION 16

APPENDIX:

Temporary Restraining Order of the District Court (May 27, 1976) A1

Temporary Injunction of the District Court (October 22, 1976) A20

Summary Judgment of the District Court (October 22, 1976) A23

Judgment of the Texas Court of Appeals (October 5, 1977) A28

Opinion of the Texas Court of Appeals (October 5, 1977) A29

Refusal of Texas Supreme Court of Application for Writ of Error (February 8, 1978) A37

Order of Texas Supreme Court Overruling Motion for Rehearing (March 8, 1978) A38

Notices of Appeal to the Supreme Court of the United States A39

Child Care Licensing Act of 1975 ..... A43

TABLE OF AUTHORITIES

Cases

Braunfeld v. Brown, 366 U.S. 599 (1961) 9, 11, 14
Broadrick v. Oklahoma, 413 U.S. 603 (1973) 11
Cantwell v. Connecticut, 310 U.S. 296 (1939) 11, 15
Cleveland v. United States, 329 U.S. 14 (1946) 9, 14
Committee For Public Education v. Nyquist, 413 U.S. 756 (1973) 10
Jacobson v. Massachusetts, 197 U.S. 11 (1905) 8, 14
Jamison v. Texas, 318 U.S. 413 (1942) 2
Kunz v. New York, 340 U.S. 290 (1951) 11
Lemon v. Kurtzman, 403 U.S. 602 (1971) 10
Lovell v. Griffin, 303 U.S. 444 (1937) 2
Pierce v. Society of Sisters, 268 U.S. 510 (1924) 9
Prince v. Massachusetts, 321 U.S. 158 (1943) 8, 14
Reynolds v. United States, 98 U.S. 145 (1878) 8, 14
Sherbert v. Verner, 373 U.S. 398 (1963) 12, 15
Wisconsin v. Yoder, 406 U.S. 205 (1972) 15
Wolman v. Walter, ___ U.S. 53 L. Ed. 2d 714 (1977) 11

Statutes

Texas Revised Statutes Ann. Art. 695a-3 (Child Care Licensing Act of 1975) 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15

Constitutional Provisions

United States Constitution:
Amendment 1, Free Exercise Clause 3, 4, 5, 7, 8, 11, 14
Amendment 1, Establishment Clause 3, 4, 5, 8, 9, 10, 11, 12, 13, 14
Amendment 14, Equal Protection Clause 3, 4, 11, 12, 13, 14
Amendment 14, Due Process Clause 3, 4, 8, 9, 11, 13, 14
28 U.S.C. § 1257 (2) 2

Supreme Court of the United States

October Term, 1977

No. ____

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON AND HARMON OXFORD,
Appellants,

vs.

THE STATE OF TEXAS,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

Appellants' appeal from the judgment and opinion of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, from which their Application for Writ of Error was refused by the Supreme Court of Texas on February 8, 1978. Appellants' Motion for Rehearing was overruled by the Supreme Court of Texas on March 8, 1978. The decree of March 8, 1978 of the Supreme Court of Texas is the final judgment of the highest court of the State of Texas.

OPINIONS BELOW

The opinion of the Court of Civil Appeals for the Third Supreme Judicial District of Texas is not yet reported. Copies of the judgment and opinion are found in Appendix p. A29. No opinion was handed down by the District Court, 126th Judicial District, Travis County, Texas nor by the Texas Supreme Court, the latter refusing appellants' Application for Writ of Error and overruling appellants' Motion for Rehearing.

JURISDICTION

The Supreme Court of Texas refused Appellants' Application for Writ of Error on February 8, 1978. The judgment of the Supreme Court of Texas overruling appellants' Motion for Rehearing was entered March 8, 1978. The judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas affirming summary judgment against appellants was entered on October 5, 1977. All of the foregoing appeals, applications and motions were timely and duly filed.

The cause is one in which the validity of a statute of the State of Texas (Child Care Licensing Act of 1975) was drawn into question on the ground of its being repugnant to the Constitution of the United States, the decision being in favor of its validity. The Supreme Court, accordingly, has jurisdiction on appeal under 28 U.S.C. Section 1257 (2). *See, Lovell v. Griffin,* 303 U.S. 444; *Jamison v. Texas,* 318 U.S. 413.

STATUTE INVOLVED

The statute, the validity of which was drawn in question, is an ordinance of the State of Texas, of January 1, 1976, which requires the licensing and regulation of all facilities and institutions in the State of Texas which fall within the statute's definition of "child care" facilities. Violation of the statute may result in the closure of such facility, injunctive relief, civil penalties of up to $1,000 for each day of violation, and criminal penalties, as a misdemeanor, of class B and/or C. See the full text of the Child Care Licensing Act of 1975 found in Appendix p. A43.

QUESTIONS PRESENTED

The appeal presents four questions under the Constitution of the United States:

(1) Whether the Texas Child Care Licensing Act is invalid on its face as a prohibition of an establishment of religion, in violation of the First Amendment, made applicable to the States by the Fourteenth;

(2) Whether the Statute, in authorizing a pervasive scheme of State regulation of the rehabilitative, educational, financial and other aspects of child care facilities on the vague and indefinite ground that "It shall be the policy of the state to insure protection of children under care in child care facilities, and to encourage and assist in the improvement of child care programs" conflicts with the amendments;

(3) Whether the statute on its face and as construed to limit protection of religious freedoms to the statement that "It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or

authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization" conflicts with the amendments;

(4) Whether the statute, as applied to prohibit the operation of Appellants' religious facilities without a license from the State of Texas and without agreement to submit to a pervasive scheme of state regulation, conflicts with the amendments.

The abovementioned questions were raised by appellants in accordance with the procedure of the State of Texas and were decided in favor of the validity of the Child Care Licensing Act.

Said questions were raised in the hearing on the Motion for Contempt and Application for Temporary Injunction and were incorporated into and raised in the hearing on the Motion for Summary Judgment. They were decided both in granting temporary injunction (App. p. A20) against appellants and in granting summary judgment (App. p. A23) in favor of appellee. They were decided by the Court of Civil Appeals for the Third Supreme Judicial District of Texas in affirming the judgment of the trial court (App. pp. A29, A28).

Said appellate court concluded that the sole purpose of the Act was to protect "the health, safety, and well-being of the children of the State who reside in child care facilities", as stated in the preamble to the Act, and concluded as a matter of law, "in applying the statute to the undisputed facts", that the Act's provisions "do not in any way conflict with appellants' beliefs, nor do they restrict the exercise of those beliefs in any way." Although the appellants on appeal from the summary judgment in the District Court, 126th Judicial District, Travis County, Texas, had urged the necessity of a trial to determine the factual

issues in the case, including the factual issue of the conflict of appellants' beliefs with the regulatory scope and purpose of the Statute, the Court of Civil Appeals for the Third Supreme Judicial District of Texas concluded that all of the questions of fact had been agreed to by the State of Texas. However, the Court then characterized those admitted facts as "nothing more than a bald conclusion entirely unsupported by any factual evidence from which a jury could draw a differing conclusion" (Opinion App. pp. A33-A34), and having so characterized the factual underpinnings of the appellants' case, then refused to examine appellants' arguments that decisions of the Supreme Court of the United States under the First Amendment to the Constitution prohibited the regulation of appellants' facilities required by the Texas Statute. The decision thus affirmed the Statute on its face and also as applied to prohibit the further operation of appellants' religious facilities without a license from the State.

STATEMENT OF THE CASE

Appellant Roloff Evangelistic Enterprises, Inc., is a duly organized non-profit, tax-exempt, incorporated religious organization whose principal place of business is Nueces County, Texas. Reverend Lester L. Roloff is president and founder of Roloff Evangelistic Enterprises, Inc. Defendants Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford were on various occasions employed by Roloff Evangelistic Enterprises, Inc., to assist in the ministries of the appellant Enterprises.

The activity engaged in by appellant Enterprises which constitutes the crux of the instant matter is the encouragement of the spiritual and moral rehabilitation of young persons by and through the operation of various religious/residential centers in the State of Texas, known as the

Anchor Home and Lighthouse (for boys), and the Rebekah Home (for girls). These three ministries are wholly supported through voluntary contributions of persons who share the religious beliefs of the appellants. Residents are admitted to the homes either through application of their parents or guardians, or in some instances, upon referral of the juvenile courts. However, in no instance is residence at one of the homes required or coerced by the State of Texas, and in no instance is any resident at one of the homes supported in such residence by payments of any nature by the State of Texas.

The underlying foundation or philosophy which is shared by the appellants and controls the operation and lifestyle of the homes is the Bible. Every aspect of life of both the staff and residents of the homes, including dress, diet, recreation, teaching, discipline, and spiritual rehabilitation is drawn from the Bible. The basic premise by which these homes operate is that faith in Jesus Christ is the only way of salvation. This is the single motive and reason for existence of these ministries.

On May 27, 1976, the State of Texas, without notice to the appellants, secured from the 126th District Court of Travis County, Texas, an ex parte temporary restraining order, requiring appellant Enterprises, among other things, that appellant submit to investigation, inspection, and evaluation (and ultimately licensing) pursuant to the terms of the Child Care Licensing Act challenged in this case. The temporary restraining order, seventeen pages in length (TRO App. p. A1), was served at about 6:00 p.m. by the sheriff on Rev. Roloff on May 27, 1976, at the Rebekah Home, and shortly thereafter, around 6:15 p.m., officials of the State Department of Public Welfare of the State of Texas arrived at appellant's homes subsequent to a coordinated effort between the sheriff's department and the welfare department involving the utilization of helicopters and two way radios, and demanded entry—Rev. Roloff denied the officials entry on the grounds that (1) supervision of the homes infringed on appellants' religious convictions as well as those of the staff and residents; and (2) he had not had an opportunity to consult with his attorneys concerning the 17 page ex parte restraining order that had just been served upon him. Thereafter Rev. Roloff was cited for contempt for violation of the temporary restraining order. On June 3rd through June 7th, 1976, a hearing was held on the contempt citation followed by a hearing on the request of the State of Texas for temporary injunction based on the same act. On June 7th, 1976, Rev. Roloff was held in contempt, and temporary injunction was granted against appellants (Temp. Inj. App. p. A20). The State of Texas filed a motion for summary judgment on the underlying question of the applicability of the act to appellants' homes. On or about October 22, 1976, the court entered summary judgment against appellants to enjoin appellants from operating the homes without a license pursuant to and in compliance with this Act challenged in this case, to allow officials of the State Department of Public Welfare to interview staff members and residents, and to pay civil penalties in the sum of Twenty-three Thousand, Six Hundred and Fifty Dollars ($23,650.00) (Summary Judgment App. p. A23). On October 5, 1976, the Court of Civil Appeals, Third Supreme Judicial District of Texas affirmed the judgment of the trial court (Judgment & Opinion. App. pp. A28, A29). On March 8, 1978, the Supreme Court of Texas overruled appellants' Motion for Rehearing, thus declining to review the decision of the Court of Civil Appeals (Order App. p. A37).

THE QUESTIONS ARE SUBSTANTIAL

1. Whether the First Amendment of the Constitution permits a religious organization to maintain rehabilitation facilities for juveniles and others without general and pervasive State regulation of all facets of its operations, including the requirement of a State license, submission to inspection by the State at any time, regular State audits of its financial accounts, and general overseeing by a State Advisory Committee, as the decision of the Court of Civil Appeals by necessary implication holds, *Jacobson v. Massachusetts*, 197 U.S. 11, is a substantial constitutional question.

The Texas statute drawn in question was held to apply to appellants on its face without any analysis by the Texas Court of Civil Appeals of the religious objections made to the statute by appellants. That statute on its face secularizes all facets of all private institutions that can be drawn within the broad definition of "child care facility", notwithstanding serious objections that the institutions so included are religious in their nature. The statute on its face thus prohibits existing religious establishments from operating in the State of Texas independently of State control over every facet of their operation. As thus presented, the question goes beyond any of those cases previously decided by the Supreme Court which permitted reasonable and narrowly drawn regulations to be promulgated by the States, even though they arguably violated individual religious beliefs, when the State had a compelling interest derived from its police power to protect the public: for example, to protect the public health, *Jacobson v. Massachusetts*, 197 U.S. 11 (smallpox vaccination); to protect the society's interest in the family as an institution, *Reynolds v. United States*, 98 U.S. 145 (polygamy); to guard children against exploitation of their labor, *Prince v. Massachusetts*, 321 U.S. 158 (child

labor laws); to protect society and individuals from so-called "white slavery", *Cleveland v. United States*, 329 U.S. 14 (Mann Act); or to achieve a uniform day of rest for workers, *Braunfeld v. Brown*, 366 U.S. 599 (Sunday closing laws).

(a) In *Pierce v. Society of Sisters*, 268 U.S. 510, decided on Due Process grounds, this Court held that a state law requiring parents to send their children to public schools interfered with the "liberty" of the parents and guardians of children to direct their upbringing, as well as with the "property" of the private and parochial schools involved, which were threatened with extinction as a result of the State law. This case clearly presents the question whether the liberty and property protected by the Due Process Clause, as in *Pierce*, or by the Establishment Clause of the First Amendment as an alternative source of the same rights, extends to a religious institution devoted to the care and spiritual rehabilitation of juveniles. As in *Pierce*, the religious organizations in this case are threatened with destruction by the State through the imposition of a licensing requirement conditioned on pervasive state supervision of and involvement in its rehabilitative and religious functions, and the parents and children who are utilizing such religious institutions are threatened with the loss of their right to choose religious rather than secular forms of rehabilitation.

(b) This case presents issues not heretofore resolved by this Court in its decisions under the Establishment Clause of the First Amendment, by presenting squarely the question whether the Establishment Clause protects religious institutions against broad and general prohibitions of their functioning free from excessive state entanglement in their affairs. The principle of excessive entanglement enunciated by this Court in cases where a

State sought to provide aid to religious schools which were willing recipients of it, are equally applicable to the differing circumstances of this case, where state "aid" (if such it can be called), is resisted as an unwanted and prohibited interference by the State of Texas with appellants' religious activities. This statute would fall under decisions of the Supreme Court were appellants to submit to its provisions willingly, and were the statute then subjected to attack by others on Establishment Clause grounds on the theory of excessive entanglement. Thus in all respects this statute provides for the "comprehensive, discriminating, and continuing state surveillance" expressly disapproved by the Court in *Lemon v. Kurtzman*, 403 U.S. 602, 619, and which, as surely as any direct financial aid to a religious institution, has the inevitable effect of breaking down that "wall of separation" which is of the essence of the Establishment Clause, albeit difficult at times of precise delineation, *Committee For Public Education v. Nyquist*, 413 U.S. 756. The statute must be read in its entirety and with the understanding that it provides for the promulgation of further extensive regulations by the State agencies involved, and the creation of yet new agencies to supervise appellants' operations, in order to fully understand the extent of the State's grasp on appellants' religious organizations. At the very least, the State's power to inspect appellants' financial records as a condition of issuing a license (Sec. 10) and its explicit power to conduct unannounced inspections of appellants' facilities at any time, with or without a reason for doing so (Sec. 7), constitute that excessive entanglement which this Court ruled unconstitutional in *Lemon v. Kurtzman*, 403 U.S. at 621-22.

(c) This case squarely presents the related question, not heretofore decided by the Supreme Court, whether the fact that a State *may* constitutionally provide certain types of welfare assistance, within the scope of its police

powers, on a secular basis to religious institutions without violating the Establishment Clause, *Wolman v. Walter*, ___ U.S. ___ (1977), 53 L. Ed. 2d 714 allows the State to *force* a religious institution to accept such welfare ministrations against its wishes, ignoring its contentions that the assistance profferred violates fundamental tenets of the religion, without providing for a judicial balancing of the interests of the State against the religious interests of the religious organization, and without having first to establish that the State has a compelling interest for imposing the unwanted assistance.

2. Whether the Texas statute drawn in question suffers from vagueness and overbreadth prohibited by the First and Fourteenth Amendments, *Cantwell v. Connecticut*, 310 U.S. 296; *Kunz v. New York*, 340 U.S. 290; *Broadrick v. Oklahoma*, 413 U.S. 603, is a very substantial question. This Court has sustained State statutes against charges that they interfered with the free exercise of religion, or aided an establishment of religion, when the statutes have been narrowly drawn, have clearly and precisely delineated the scope and purpose of state action, have been supported by a compelling state interest, and have only incidentally burdened or aided religion, as in *Braunfeld v. Brown*, 366 U.S. 599. The vice of the Texas statute is that it provides for a general scheme of regulation of appellants' facilities over a whole range of activities, including rehabilitative and financial, on the grounds of a vaguely stated State policy "to insure protection of children under care in child care facilities, and to encourage and assist in the improvement of child care programs." It relegates to a department of the State of Texas broad authority to regulate and to promulgate regulations over a whole range of activities, including those related to the rehabilitative and financial aspects of appellants' institutions. The statute on its face does not purport to limit

the State's involvement and concern to questions of physical health and safety of the facilities regulated, nor even to the adequacy of the educational preparation offered the children in such facilities. Indeed, appellants have never challenged reasonable State regulation in the interest of health and safety under other laws of the State of Texas. Even were the sole purpose of the State in enacting the present statute merely to change the manner in which it effectuates its legitimate interest in the safety and health of the children of the State, which it is not, the Supreme Court's decisions still would require that the State adopt, to the extent possible, the means that least restrict religious practices, *Sherbert v. Verner,* 374 U.S. 398. However, this statute was not subjected to any narrowing construction by the Texas Court of Civil Appeals, nor did that Court attempt to employ a balancing test in its application of the statute to appellants' religious facilities, nor did it even consider that such a balancing test was required by the Supreme Court's decisions. Thus the challenged statute stands, as it is written, as a general regulatory law against which appellants' religious beliefs and practices have no weight, and to which they must yield whenever, in the opinion of the Texas Department of Public Welfare or the Texas State Advisory Committee on Child Care Facilities, or both, they are in conflict with whatever the State of Texas determines to be desirable regulation of their activities.

3. Whether the statute (App. p. A43) on its face and as construed by the Texas State courts to limit protection of religious freedoms to those groups and activities recognized by the State of Texas as qualifying for religious exemptions, violates the Establishment Clause and the Equal Protection Clause by providing a State preference for one religious activity over another, and violates the

Due Process Clause by creating an arbitrary classification and an irrebuttable presumption, presents a substantial federal question.

On the face of the statute, the State of Texas disclaims any intention to interfere with freedom of religion or to "regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization." (Sec 1(b)). The statute further provides that the State Department of Public Welfare "shall not regulate or attempt to regulate or control the content or method of any instruction or the curriculum of a school sponsored by a church or religious organization." (Sec. 5(j)). The courts below ruled that appellants' institutions were not entitled to exemption from regulation under these provisions and further ruled that nothing in the statute could be construed to interfere with any religious instruction offered by appellants (Opinion App. pp. A34-A35). The courts below thus left open the possibility that other institutions than appellants' might be given an exemption under the statute for religious reasons, and thus created the anomolous situation that the State, having created an exemption for religious schools and instruction, has also reserved to itself the unfettered authority to define what they are and are not. Both under the Establishment Clause and the Equal Protection Clause (which is brought in issue by the classification of religious schools and instruction) the State had the burden of showing a compelling state interest to justify the regulation of appellants' religious institutions and to do so on a basis different from that it might impose on some other religious order. But at no point in the proceeding below was the State required to bear such a burden, and at no point in the record is it evident that the State did so. The rulings of the courts below for that reason appear to be arbitrary and unsup-

ported by any evidence, or by sufficient evidence to overcome the appellants' claim of entitlement to protection from state regulation on religious grounds.

4. The question whether the statute as applied to prohibit appellants' operation of their religious institutions without a license from the State of Texas and submission to a pervasive scheme of state regulation, conflicts with the First and Fourteenth Amendments, poses a substantial constitutional issue. The State of Texas has asserted, through this legislation, power to control every activity related to appellants' operations of juvenile rehabilitation centers, and even to shut them down when and if, in the opinion of the State Department of Public Welfare, their operation conflicts with their judgment concerning how rehabilitation should be carried out. Thus the issue of conflict between the religious freedom of appellants, of the children in their institutions, and of the parents and guardians of those children, with the State's authority to regulate their activities and the practice of their beliefs, is clearly drawn in question.

In every case in which this Court has hitherto upheld the power of the State to impose a burden either directly or indirectly in conflict with acknowledged religious beliefs or practices, it has done so because the state had a compelling interest in the requirement which, on balance, could not be served by a less burdensome means. *Jacobson v. Massachusetts,* 197 U.S. 11; *Reynolds v. United States,* 98 U.S. 145; *Prince v. Massachusetts,* 321 U.S. 158; *Cleveland v. United States,* 329 U.S. 14; *Braunfeld v. Brown,* 366 U.S. 599. In none of those cases did this Court authorize a state to engage in an extensive program or regulation of a religious institution, or to inquire generally into its practices on the ground of serving some generalized state interest in the public welfare, as is the case with the Texas statute as applied herein to appellants.

Appellants asserted in the courts below, and offered evidence in proof of their assertions, that their practices in connection with the offer of rehabilitation services were totally integrated with their religious beliefs and aims; that the dominant purpose of their institutions is to save souls through helping children to live Godly and useful lives on earth according to the commands of the Bible; and that the purpose and practice of their religious beliefs would be totally and shamefully disrupted and rendered worthless by invasions of State authorities of the sort which started this present litigation. The State of Texas did not dispute the factual accuracy of the appellants' statements of their beliefs, and in moving for summary judgment indicated that they were willing to accept the truth of all of appellants' factual allegations. In granting summary judgment, the trial court likewise accepted as true all of appellants' factual statements of their beliefs and of the conflicts set up by the statute with those beliefs and practices. In affirming the trial court, The Texas Court of Civil Appeals likewise accepted as true all of appellants' factual allegations relating to their beliefs and practices. Thus the rulings below emphatically take the position that the State of Texas has the power to regulate appellants' institutions and practices regardless of how that regulation conflicts with appellants' religious beliefs and religious practices.

In such a pervasive scheme as this statute, as applied to appellants, provides, there is no room left for religious freedom or for any nonconformity of religious practices with what the State of Texas deems desirable behavior. This result is clearly contrary to this Court's decisions in *Wisconsin v. Yoder,* 406 U.S. 205; *Sherbert v. Verner,* 374 U.S. 398; and *Cantwell v. Connecticut,* 310 U.S. 296.

CONCLUSION

The constitutional questions presented by this appeal are substantial and of great public importance. The case in some instances is one of first impression at the federal appellate level. It is respectfully submitted that probable jurisdiction should be noted. The judgment of the Texas Court should be reversed.

Respectfully Submitted,

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APPENDIX

TEMPORARY RESTRAINING ORDER OF THE DISTRICT COURT

(Issued May 27, 1976)

THE STATE OF TEXAS

TO JACK PATTERSON GREETING:

WHEREAS, in a certain cause pending on the docket of the 126th District Court of Travis County, Texas, being cause number 248,199, wherein The State of Texas, Plaintiff and Roloff Evangelistic Enterprises, Inc., et al. Defendant. In said suit Plaintiff has filed its Original Petition, asking, among other things, for the granting and issuance of a Writ of Temporary Restraining Order, to restrain the defendant Jack Patterson as fully set out and prayed for in Plaintiff's Original Petition, certified copy of which is attached hereto and to which reference is here made for the injunctive relief sought by the Plaintiff; upon presentation and consideration of said petition, the Hon. James R. Meyers has entered in said cause the following, to-wit: Copy of order attached to writ served.

AND WHEREAS, Bond (if required) has been filed and approved:

THESE ARE THEREFORE, to Restrain, and you the said Jack Patterson are hereby restrained as fully set out and prayed for in Plaintiff's Original Petition, certified copy of which is attached hereto, made a part hereof and to which reference is hereby made for a full and complete statement of the injunctive relief sought by the Plaintiff;

AND YOU ARE FURTHER NOTIFIED that the hearing on Plaintiff's Application for Temporary Injunction is set for hearing at the Courthouse, in the City of Austin, June 3, 1976, at 2:00 P.M., at which time you are required to appear and show cause, if any, why said injunction should not be granted as prayed for;

HEREIN FAIL NOT to obey this Writ, under the Pains and Penalties prescribed by LAW!

Issued and given under my hand and seal of office, at Austin, Texas, this the 27 day of May, A.D., 1976.

O. T. MARTIN, JR.
District Clerk, Travis County, Texas

By LINDA GOSSETT, Deputy

No. 248,199

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
126th Judicial District

THE STATE OF TEXAS,
Plaintiff,

v.

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON, AND HARMON OXFORD,
Defendants.

ORDER

BE IT REMEMBERED, that on May 27th, 1976, this Court heard the application of the State of Texas, Plaintiff, for a temporary restraining order, upon the Plaintiff's verified petition, without notice to the Defendants, and the Court, having considered the facts set forth in said verified petition, finds that immediate and irreparable injury, loss, harm, and damage will result to the Plaintiff before notice could be served and a hearing had thereon, because Defendants are in open violation of the laws of the State of Texas in refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Anchor Home for Boys, and Lighthouse for Boys during hours of operation for purposes of investigation, inspection and evaluation as required by Section 7, Child Care Licensing Act, Article 695a-3, V.A.T.S., and will continue to do so unless restrained immediately by a temporary restraining order and the Court further finds that such violation by the Defendants endangers the health, safety and well being

of the children in the Rebekah Home for Girls, Anchor Home for Boys, and the Lighthouse for Boys and such unlawful acts should be restrained and enjoined.

It is therefore, ORDERED that the clerk of this Court issue a temporary restraining order restraining and enjoining the Defendants Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Mrs. Raymond Weatherford, Jack Pattterson and Harmon Oxford from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, the Anchor Home for Boys, and the Lighthouse for Boys during hours of operation and to interview staff members and children in care at the facilities for purposes of investigation, inspection and evaluation.

It is further ORDERED that upon service of the temporary restraining order provided herein the Defendant Roloff Evangelistic Enterprises, Inc., through its President, Lester L. Roloff, immediately advise and inform all directors, officers, employees, agents and servants of Roloff Evangelistic Enterprises, Inc. who are involved in any way or who may become so involved during the pendency of this order in the operation of the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys, of the issuance, contents and requirements of this temporary restraining order and that all children in care at the Rebekah Home for Girls, Lighthouse for Boys and Anchor Home for Boys be likewise advised and informed.

It is further ORDERED that since Plaintiff is the State of Texas, no bond in connection with this temporary restraining order shall be required.

It is further ORDERED that the Plaintiff's Application for a Temporary Injunction as set forth in Plaintiff's Original Petition is hereby set for hearing before this Court at 2 o'clock P.M., on June 3, 1976, in the District

Court, 126th Judicial District, Travis County, Texas, and that the temporary restraining order herein granted remain operative until and pending said hearing.

Signed on May 27, 1976, at 10:45 o'clock, A.M.

/s/ JAMES R. MEYERS
Judge Presiding

No. 248,199

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
126th Judicial District

THE STATE OF TEXAS,
Plaintiff,

v.

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON, AND HARMON OXFORD,
Defendants.

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

(Filed May 27, 1976)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the State of Texas, for and on behalf of the State Department of Public Welfare, hereinafter referred to as Plaintiff or State, and appearing by and through John L. Hill, Attorney General of Texas, and files this its Original Petition and Application for Temporary Restraining Order complaining of Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford, and for cause of action would respectfully show:

I.

Plaintiff, acting through the State Department of Public Welfare, is charged with the responsibility for licensing and regulation of facilities providing care for

children pursuant to the provisions of Article 695a-3, V.T.C.S., hereinafter referred to as the Child Care Licensing Act, to protect the health, safety and well being of the children in such facilities.

II.

Defendant Roloff Evangelistic Enterprises, Inc. is a Texas non-profit corporation, the President of which is Lester L. Roloff. Service on the Defendant Roloff Evangelistic Enterprises, Inc., may be made by serving Lester L. Roloff at 915 Park Avenue or at the Rebekah Home for Girls, F.M. Road No. 665, Corpus Christie, [sic] Nueces County, Texas.

Defendants Raymond Weatherford and Mrs. Raymond Weatherford act jointly as superintendents of a child care facility known as the Rebekah Home for Girls, F.M. Road No. 665, Nueces County, Texas, where service upon them may be made.

Defendant Jack Patterson acts as superintendent of a child care facility known as the Lighthouse for Boys situated on a boat barge which is located at Marker 209 in the Intercoastal Canal off the mainland of Kenedy County, Texas, where service upon him may be made.

Defendant Harmon Oxford acts as superintendent of a child care facility known as the Anchor Home for Boys located at Zapata, Zapata County, Texas, where service upon him may be made.

III.

This cause of action is brought pursuant to and under the terms and provisions of the Child Care Licensing Act. Section 2(3) thereof provides:

> "Child care facility" means a facility providing care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage,

or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the services offered by it.

Section 2(5) provides:

"Person" includes an individual, a public or private agency, an association, or a corporation.

Section 4(a) provides:

No person may operate a child care facility or child placing agency unless he holds a valid license issued by the division.

Section 7(a) provides:

An authorized representative of the division may visit a child care facility or child placing agency during the hours of operation for purposes of investigation, inspection and evaluation.

Section 22 provides:

(a) Whenever it appears that a person has violated or is violating or threatening to violate any provision of this Act or of any rule, regulation, or standard of the department, the division may cause a civil suit to be instituted in a district court of Travis County or in the County in which the facility is located, for injunctive relief, including temporary restraining orders, to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalties. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, standard, or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the division, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized by Subsection (a) of this section.

IV.

Defendant, Roloff Evangelistic Enterprises, Inc. does now operate and has operated each and every day since January 1, 1976, three (3) child care facilities as defined above:

1. Rebekah Home for Girls, located in Nueces County, Texas.
2. Anchor Home for Boys, located in Zapata County, Texas; and
3. The Lighthouse for Boys, located on a barge or boat at Marker 209 in the Intercoastal Canal off the Kenedy County, Texas mainland.

Defendant Roloff Evangelistic Enterprises, Inc. does not have licenses to operate the Rebekah Home for Girls, Anchor Home for Boys, and the Lighthouse for Boys, nor has Defendant Roloff Evangelistic Enterprises, Inc. or any of the other Defendants ever had licenses for such operations. Each day that Defendant Roloff Evangelistic Enterprises, Inc. has operated the Rebekah Home for Girls as a child care facility since January 1, 1976, is a separate violation of the Child Care Licensing Act. Each day that Defendant Roloff Evangelistic Enterprises, Inc. has operated the Lighthouse for Boys since January 1, 1976, is a separate violation of the Child Care Licensing Act. Defendant Roloff Evangelistic Enterprises, Inc. will continue to operate said child care facilities in violation of the Child Care Licensing Act unless enjoined by this Court. The

State is entitled to injunctive relief against such violations by Section 22 of the Child Care Licensing Act.

V.

On May 14, 1976, at approximately 8:50 a.m., Christine Wisian, Mary Lou Goranson, and Dixie Huffman, representatives of the State Department of Public Welfare, sought to visit the Rebekah Home for Girls during the hours of operation for purposes of investigation, inspection, and evaluation. Defendant Mrs. Raymond Weatherford advised the Department representatives that she and her husband, Raymond Weatherford, were superintendents in control of the Rebekah Home for Girls and were employees of Roloff Evangelistic Enterprises, Inc. Huffman asked Mrs. Weatherford whether the Department representatives would be allowed to interview children in care and staff at the facility. Mrs. Weatherford replied, "The answer is still the same, no." Huffman then read Section 7 of the Child Care Licensing Act to the Defendant Mrs. Raymond Weatherford and repeated her request that the representatives be allowed to interview children. Mrs. Weatherford again refused. She told the Department representatives that she had been instructed to refuse to allow the Department representatives to interview children or staff by Lester L. Roloff, President of the Defendant Roloff Evangelistic Enterprises, Inc. Lester L. Roloff himself had refused to allow Huffman to speak to children and staff as a part of an investigation and inspection of Rebekah Home for Girls on February 12, 1976. As a result of the acts of Defendants Mrs. Raymond Weatherford and Roloff Evangelistic Enterprises, Inc., the representatives of the Department were unable to insure the health, safety and well being of the children at the Rebekah Home for Girls. Based upon their past conduct and their own representations, Defendants Roloff Evangelistic Enterprises, Inc., Mrs. Raymond Weatherford and Raymond Weatherford will continue to prevent the Department representatives from investigating and inspecting the Rebekah Home for Girls unless restrained and enjoined.

VI.

On May 14, 1976, at approximately 10:30 a.m., Christine Wisian, Mary Lou Goranson, and Dixie Huffman, representatives of the State Department of Public Welfare, sought to visit the Lighthouse for Boys off the Kenedy County mainland during hours of operation for purposes of investigation, inspection and evaluation; specifically, they sought to investigate allegations of abuse and mistreatment of children at the Lighthouse for Boys. Defendant Jack Patterson met the Department representatives approximately fifty (50) yards from the barge or boat on which the Lighthouse is located and identified himself as the superintendent in control of the Lighthouse for Boys and an employee of the Defendant Roloff Evangelistic Enterprises, Inc. Huffman advised the Defendant Patterson that the Department representatives had come to investigate allegations of child abuse and mistreatment at the Lighthouse. The Defendant Patterson replied, "I don't know why you keep coming down here. You should know by now that you can't talk to anyone." Huffman asked the Defendant Patterson, "May we interview the boys now?" Patterson replied, "No." Huffman then said, "Then you are refusing to let us in?" Patterson replied, "Yes." Huffman then read to the Defendant Patterson Section 7 of the Child Care Licensing Act. The Defendant Patterson continued to refuse to allow the Department representatives to visit the Lighthouse for Boys and referred the representatives to his attorneys. As a result of the acts of Defendants Jack Patterson and Roloff Evangelistic Enterprises, Inc. the representatives of the Department were

unable to insure the health, safety and well being of the children at the Lighthouse for Boys and were specifically prevented from investigating allegations of child abuse and mistreatment at the facility. Based upon past conduct and the representations of the Defendant Patterson, Defendants Roloff Evangelistic Enterprises, Inc. and Jack Patterson will continue to prevent the Department representatives from investigating and inspecting the Lighthouse for Boys unless restrained and enjoined.

VII.

On May 13, 1976, at approximately 1:10 p.m., Christine Wisian, H. H. Garza and Mrs. Luci Flores, representatives of the State Department of Public Welfare, sought to visit the Anchor Home for Boys in Zapata County, Texas during hours of operation for purposes of investigation, inspection and evaluation; specifically they sought to investigate allegations of abuse and mistreatment of children at the Anchor Home for Boys. Upon their arrival at the office of the Anchor Home for Boys, the Department representatives met with the Defendant Harmon Oxford, who identified himself as the superintendent in control of the Anchor Home for Boys and an employee of the Defendant Roloff Evangelistic Enterprises, Inc. Wisian advised the Defendant Oxford that the Department representatives had come to investigate allegations of abuse and mistreatment of several children who had recently run away from the facility and who were on May 13, 1976, in the custody of the Juvenile Probation Department in Laredo, Texas. The Defendant Oxford told the representatives that his attorney had advised him that no one was to be allowed on the premises of the Anchor Home. Wisian then asked whether the representatives of the Department would be allowed to interview staff members regarding the allegations of abuse of children. The Defendant Oxford

replied, "No, you may not." Wisian attempted to read to the Defendant Oxford Section 7 of the Child Care Licensing Act. Oxford interrupted that he did not have time to listen to the reading. Wisian asked the Defendant Oxford if he as an employee of the Roloff Evangelistic Enterprises, Inc. was refusing the Department representatives entrance to the Anchor Home. The Defendant Oxford replied, "Yes." Wisian asked the Defendant Oxford if he knew that by his actions he was violating the Child Care Licensing Act. He replied, "I have told you about that." He then asked the representatives to leave the facility. As a result of the acts of Defendants Harmon Oxford and Roloff Evangelistic Enterprises, Inc., the representatives of the Department were unable to insure the health, safety and well being of the children at the Anchor Home for Boys and were specifically prevented from investigating allegations of child abuse and mistreatment at the facility. Previously, on January 13, 1976, and on May 4, 1976, the Defendant Roloff Evangelistic Enterprises, Inc. had refused to allow representatives of the Department of Public Welfare to visit the Anchor Home for Boys for purposes of investigation, inspection and evaluation. Based upon past conduct and the representations of the Defendant Harmon Oxford, Defendants Roloff Evangelistic Enterprises, Inc. and Harmon Oxford will continue to prevent the Department representatives from visiting the Anchor Home for Boys for purposes of inspection, investigation and evaluation unless restrained and enjoined.

VIII.

The Department is made unable to protect the health, safety and well being of the children in the Roloff facilities by the refusal of the Defendants to allow Department representatives to visit the facilities for purposes of investigation, inspection and evaluation. The health, safety and well

being of the children in the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys are thereby immediately endangered. A temporary restraining order should therefore be issued before notice and hearing enjoining Defendants from preventing the Department from protecting the children within the Roloff facilities by exercising the responsibilities and authority of the Department as described in Section 7 of the Child Care Licensing Act.

IX.

The child care facilities operated by Defendant Roloff Evangelistic Enterprises, Inc. are subject to licensing pursuant to the Child Care Licensing Act and do not fall within any of the exclusions described at Section 4(b) of the Act.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays:

(1) That upon filing and before notice and hearing a temporary restraining order be issued by this Court restraining the Defendant Roloff Evangelistic Enterprises, Inc., its officers, employees, and agents, and Defendants Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson and Harmon Oxford from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys during hours of operation and to interview staff members and children in care for purposes of investigation, inspection and evaluation, and that the district clerk cause such temporary restraining order to be served upon the President of the Defendant Roloff Evangelistic Enterprises, Inc., and upon Defendants Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford;

(2) That the Defendant Roloff Evangelistic Enterprises, Inc., through its President Lester L. Roloff, be ordered to immediately advise and inform all directors, officers, employees, agents and servants of Roloff Evangelistic Enterprises, Inc., who are involved in any way or who may become involved in the operation of the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys of the issuance and contents of the prayed for temporary restraining order and that all children in care at the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys be likewise advised and informed.

(3) That at the earliest possible date the Court set this matter down for hearing and that after notice and hearing a temporary injunction be issued enjoining the Defendant Roloff Evangelistic Enterprises, Inc., its officers, employees, and agents, and Defendants Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys during hours of operation and to interview staff members and children in care for purposes of investigation, inspection and evaluation;

(4) That upon final hearing of this cause, a permanent injunction be issued enjoining the Defendant Roloff Evangelistic Enterprises, Inc., its officers, employees and agents, and Defendants Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford, from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys, during hours of operation and to interview staff members and children in care for purposes of investigation, inspection and evaluation;

(5) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises, Inc., in the sum of $50 to $1,000 for each day that the Defendant has operated the Rebekah Home for Girls as a child care facility without a license issued by the State Department of Public Welfare since January 1, 1976, and for each day subsequent to the filing of this cause on which the State may show that the Defendant has so operated the Rebekah Home for Girls;

(6) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises, Inc., in the sum of $50 to $1,000 for each day that the Defendant has operated the Lighthouse for Boys as a child care facility without a license issued by the State Department of Public Welfare since January 1, 1976, and for each day subsequent to the filing of this cause on which the State may show that the Defendant has so operated the Lighthouse for Boys;

(7) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises, Inc., in the sum of $50 to $1,000 for each day that the Defendant has operated the Anchor Home for Boys as a child care facility without a license issued by the State Department of Public Welfare since January 1, 1976, and for each day subsequent to the filing of this cause on which the State may show that the Defendant has so operated the Anchor Home for Boys;

(8) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises, Inc., in the sum of $50 to $1,000 for refusing to allow representatives of the State Department of Public Welfare to visit and inspect the Rebekah Home for Girls on May 14, 1976, and for each time subsequent to the filing of this cause that the Defendant refuses to allow represen-

tatives of the Department to visit and inspect the Rebekah Home for Girls;

(9) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises, Inc., in the sum of $50 to $1,000 for refusing to allow representatives of the State Department of Public Welfare to visit and inspect the Lighthouse for Boys on May 14, 1976, and for each time subsequent to the filing of this cause that the Defendant refuses to allow representatives of the Department to visit and inspect the Lighthouse for Boys;

(10) That upon final hearing of this cause, civil penalties be assessed against the Defendant Roloff Evangelistic Enterprises. Inc., in the sum of $50 to $1,000 for refusing to allow representatives of the State Department of Public Welfare to visit and inspect the Anchor Home for Boys on May 13, 1976, and for each time subsequent to the filing of this cause that the Defendant refuses to allow representatives of the Department to visit and inspect the Anchor Home for Boys;

(11) That upon final hearing of this cause Defendant be permanently enjoined from operating any child care facility as defined by the Child Care Licensing Act, or successor statutes, enactment, or amendments, without having been issued a license for such operation by the State Department of Public Welfare;

(12) That the Plaintiff State of Texas be awarded its costs and for such other and further relief, both in law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

M. LYNN TAYLOR
Special Assistant Attorney General
P. O. Box 12548
Austin, Texas 78711
(512) 475-7801

AFFIDAVIT

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared CHRISTINE WISIAN who on oath stated that she is Institutional Licensing Representative for the State Department of Public Welfare and that the foregoing factual allegations of Paragraphs II, IV, V, VI, VII, VIII, and IX of the above Plaintiff's Original Petition and Application for Temporary Restraining Order are true and correct.

/s/ CHRISTINE WISIAN

SWORN TO and SUBSCRIBED before me by the said CHRISTINE WISIAN on this the day of May, 1976 to certify which witness my hand and seal of office.

/s/ LOUISE MILLER
Notary Public in and for
Travis County, Texas

My commission expires June 1, 1977.

TEMPORARY INJUNCTION OF THE DISTRICT COURT

(Entered October 22, 1976)

No. 248,199

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
126TH JUDICIAL DISTRICT

THE STATE OF TEXAS,
Plaintiff,

v.

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON, AND HARMON OXFORD,
Defendants.

TEMPORARY INJUNCTION

BE IT REMEMBERED that on June 3, 1976, came on to be heard and considered the application of the State of Texas for a temporary injunction upon its verified petition, and the Plaintiff having appeared by the Attorney General of Texas, and the Defendants, after due notice, having appeared in person and by their attorneys of record, and the court, having heard and considered the evidence and argument of counsel;

The Court finds that Plaintiff State of Texas is entitled to a temporary injunction as herein granted, the same being within the Plaintiff's allegations and prayer, for the reason that the Defendants have violated and threaten to violate the provisions of Section 7 of the Child Care Licensing Act, codified as Article 695a-3, V.T.C.S., by refusing to allow representatives of the Department of Public Welfare to visit the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys during hours of operation and to interview staff members and children in care for purposes of investigation, inspection and evaluation; and that said violations entitle the Plaintiff to a temporary injunction pursuant to Section 22 of the Child Care Licensing Act, Article 695a-3.

I.

It is, therefore, ORDERED that the Defendants Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Mrs. Raymond Weatherford, Harmon Oxford, and Jack Patterson are hereby restrained and enjoined from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys during hours of operation and to interview staff members and children in care for purposes of investigation, inspection and evaluation.

II.

It is further ordered that the representatives of the State Department of Public Welfare shall be allowed to interview children in care at the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys out of the presence of staff members.

III.

It is further ordered that if at the time of the interview of any minor child at the Rebekah Home for Girls, Lighthouse for Boys, and Anchor Home for Boys, such child shall have an acknowledged letter written and signed by the parent or legal guardian of that child requesting that an attorney be present at the interview of that child and designating by name the attorney who is to be present at such an interview, that request shall be honored by representatives of the State Department of Public Welfare.

IV.

It is further ordered that no interview of any minor child at the Rebekah Home for Girls, Lighthouse for Boys, or the Anchor Home for Boys by representatives of the State Department of Public Welfare shall be delayed for more than forty-eight (48) hours from the time such interview is sought by reason of the application of the provisions of Paragraph III above.

V.

It is further ordered that for purposes of this Injunction, "hours of operation" means the hours between 8:00 a.m. and 8:00 p.m., inclusive.

VI.

It is further ordered that this Injunction shall not in any way remove, change or affect any other processes or proceedings available pursuant to the laws of the State of Texas.

VII.

It is further ordered that since Plaintiff is the State of Texas, no bond in connection with this temporary injunction shall be required.

The Clerk of this Court is hereby directed to issue forthwith said writ of injunction as above provided, and it is further the order of this court that the temporary injunction hereby granted shall remain in full force and effect until further order of this Court.

SIGNED on June 8, 1976.

/s/ CHARLES D. MATHEWS
Judge Presiding

SUMMARY JUDGMENT OF THE DISTRICT COURT

(Entered October 22, 1976)

No. 248,199

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
126TH JUDICIAL DISTRICT

THE STATE OF TEXAS,
Plaintiff,

v.

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON, AND HARMON OXFORD,
Defendants.

JUDGMENT

BE IT REMEMBERED that on October 18, 1976, came on to be heard the Motion for Summary Judgment filed herein by Plaintiff State of Texas, wherein Roloff Evangelistic Enterprises. Inc., Raymond Weatherford, Jack Patterson, and Harmon Oxford are Defendants; and the Plaintiff and all Defendants having appeared in person and by their counsel of record, and counsel for all parties having announced ready, it appears to the Court that said Motion for Summary Judgment by Plaintiff has been made in proper form and time, that proper service of the Plaintiff's Motion has been made upon the Defendants and that said Defendants have been properly notified of the hearing on this Motion.

I.

Having considered the Plaintiff's Motion, the pleadings, affidavits, depositions, answers to interrogatories and

admissions on file herein as well as the arguments of counsel, the Court finds that there is no genuine issue of any material fact, that the claim on Plaintiff against Defendants as to civil penalties in the minimum sum allowed by law, is liquidated, and that Plaintiff is entitled to judgment as a matter of law.

II.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendants Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Jack Patterson and Harmon Oxford, their officers, agents, employees, and servants are permanently enjoined and restrained from the operation of any child care facility as defined by the Child Care Licensing Act, Article 695a-3, V.T.C.S. without having been issued a license for such operation by the State Department of Public Welfare or successor agency, and are specifically enjoined and restrained from operating the Rebekah Home for Girls, Anchor Home for Boys, and Lighthouse for Boys without having been issued licenses for such operations pursuant to the Child Care Licensing Act, Article 695a-3, V.T.C.S.

III.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Defendants Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Jack Patterson and Harmon Oxford are permanently enjoined and restrained from refusing to allow representatives of the State Department of Public Welfare to visit the Rebekah Home for Girls, Anchor Home for Boys, and Lighthouse for Boys during hours of operation and to interview staff members and children in care for purposes of investigation, inspection, and evaluation;

IV.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Defendant Roloff Evangelistic Enterprises, Inc. shall pay to the State of Texas, civil penalties in the sum of Twenty-three thousand, six hundred and fifty Dollars ($23,650), said penalty being the minimum permitted for the unlawful operation of the Rebekah Home for Girls, Anchor Home for Boys, and Lighthouse for Boys, from January 1, 1976 to June 3, 1976, and for the refusal of agents of the Roloff Evangelistic Enterprises, Inc. to allow representatives of the State Department of Public Welfare to visit and inspect the child care facilities operated by Roloff Evangelistic Enterprises, Inc. on eight separate occasions.

V.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Temporary Injunction entered in this cause on June 8, 1976, is hereby dissolved and is in all things supplanted by this Final Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the injunctive provisions of this Judgment are applicable to all officers, agents, employees, and servants of the Roloff Evangelistic Enterprises, Inc.;

VII.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff recover from Defendants all costs of suit, for all of which let execution and appropriate process issue.

VIII.

All relief not expressly granted herein is denied.

To which in open court, Defendants, Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, and Jack Patterson duly objected and excepted and gave notice of their intention to appeal this Judgment to the Court of Civil Appeals, Third Supreme Judicial District.

SIGNED AND ENTERED ON OCTOBER 22nd, 1976.

/s/ CHARLES D. MATHEWS
Judge Presiding

APPROVED AS TO SUBSTANCE AND FORM:

/s/ M. LYNN TAYLOR
M. Lynn Taylor, *Assistant*
Attorney General of Texas,
Attorney for Plaintiff

APPROVED AS TO FORM ONLY AND SERVICE OF INJUNCTION ACCEPTED:

/s/ DAVID C. GIBBS, JR.
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Corpus Christi, Texas 78401
Attorney for Defendants

LESTER L. ROLOFF
President, Roloff Evangelistic
Enterprises, Inc.

JUDGMENT OF THE TEXAS COURT OF APPEALS

(Rendered October 5, 1977)

IN THE COURT OF CIVIL APPEALS,
THIRD SUPREME JUDICIAL DISTRICT
OF TEXAS, AT AUSTIN

12,589—ROLOFF EVANGELISTIC ENTERPRISES, INC., ET AL. V. THE STATE OF TEXAS

APPEAL FROM 126TH DISTRICT COURT OF TRAVIS COUNTY

AFFIRMED — Per Curiam Opinion

THIS CAUSE came on to be heard on the transcript of the record and same being inspected, because it is the opinion of the Court that there was no error in the trial court's judgment, IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court be and same is hereby in all things affirmed; it is FURTHER ordered that appellants, Roloff Evangelistic Enterprises, Inc., Raymond Weatherford, Mrs. Raymond Weatherford, Jack Patterson, and Harmon Oxford, as principals, and Fidelity and Deposit Company of Maryland, as surety on the appeal bond herein, pay all costs in this behalf expended and that this decision be certified below for observance.

OPINION OF THE TEXAS COURT OF APPEALS

(Filed October 5, 1977)

No. 12,589

IN THE COURT OF CIVIL APPEALS,
THIRD SUPREME JUDICIAL DISTRICT
OF TEXAS, AT AUSTIN

ROLOFF EVANGELISTIC ENTERPRISES, INC., *et al.*,
Appellants,

vs.

THE STATE OF TEXAS,
Appellee.

FROM THE DISTRICT COURT OF TRAVIS COUNTY,
126TH JUDICIAL DISTRICT, No. 248,199,
HONORABLE CHARLES D. MATHEWS, JUDGE PRESIDING

PER CURIAM

This appeal presents the question of whether child care homes operated by appellants, admittedly religious in nature, are subject to the provision of the Child Care Licensing Act, Article 695a-3, Vernon's Civil Statutes, effective January 1, 1976.

At the outset of trial, the court granted the State's motion for summary judgment ordering appellants to secure licenses to operate its three child care homes and to admit agents of the Texas State Department of Public Welfare for the purposes of inspection. The court's order, in essence, requires permanent compliance with the Child Care Licensing Act.

This appeal presents, essentially, three questions. The first is whether or not there were any disputed fact situations that would have precluded the trial court from en-

tering summary judgment; the second is whether appellants' constitutional rights to the free exercise of religion are abrogated in any way by the Act; and the third is whether the trial court was correct in overruling the plea of privilege of appellant Roloff Evangelistic Enterprises wherein it asserted its right to be sued in one of the three counties in which a children's home is located.

There is no dispute but that the State made a *prima facie* case under Article 695e-3, Section 23 of the Child Care Licensing Act. This Act requires three essential elements of a cause of action: "Any person . . . who operates a facility without a license or certification as required under this Act" is subject to certain enumerated penalties.

Thus, it became incumbent upon appellants to assert some affirmative defense against the enforcement of the Act which they attempted to do by alleging the Act to be unconstitutional as applied to them.

I

To state appellants' position here, we quote from their brief:

"It has been a consistent and unwavering position on the part of Appellants that the Child Care Licensing Act and the Minimum Standards promulgated thereunder violate their religious convictions.

"Thus, Reverend Roloff has testified:

'This is the very heart of the battle. The State Department of Public Welfare doesn't have any leadership over my church, you see.'

* * * * *

"Reverend Roloff has testified, for example, that he objects to State control over the children in his ministry:

'We cannot comply with this standard since we are not responsible to the State in this matter of raising the children . . . but to God and the parents who have placed with us the sole responsibility to raise these children in a Godly manner. See, e.g., Exodus 20:12; Proverbs 1:8,9; Proverbs 4:1-9; Mark 12:17.'

* * * * *

"Q: [By the State]: 'Let me ask you this question right here. Now, I think I've heard you say in court, probably can find it here if we looked, that you operate the Enterprises solely based upon authority you find in the Bible, is that correct?'

"A: [By Rev. Roloff]: 'That certainly would be the basis of the operation.'

* * * * *

"Q: 'It's solely on the Bible?'

"A: 'That's my conviction.'

* * * * *

"Q: 'And that's the basis for your contention that you are not subject to the Child Care Licensing Act?'

"A: 'That's correct. There are conflicts that I cannot conscientiously go by and go by my Bible at the same time.'

* * * * *

"Preachers from around the country have testified that they themselves, along with thousands of Christian believers, share the conviction that the State cannot control the Christian upbringing of children in a ministry such as the Enterprises:

"Q: [By Attorney Gibbs]: 'Do you share those same beliefs?'

"A: 'Yes sir, I do.'

* * * * *

"Q: 'Are those religious comvictions [sic] to your knowledge shared by a substantial number of believers at large?'

"A: '[I] find that there are hundreds of thousands of people who share these religious convictions.' (Testimony of Reverend Gary Coleman)

* * * * *

"In addition, preachers have testified under oath that they, too, would resist licensing by the State over legitimate Christian ministries dealing with children:

"Q: [By Attorney Gibbs]: 'In regard to your beliefs which you share with Reverend Roloff, could you sanction or allow a licensing procedure to be placed upon you?'

"A: [By Rev. Clayton]: 'No, I could not.'

* * * * *

"THE COURT: 'Well, ask him—If that is your contention then ask him the question of whether or not it violates his Biblical belief for state officials to inspect the home.'

"THE WITNESS: 'Yes, it would.'

"THE COURT: 'You say it would?'

"THE WITNESS: 'Yes, it would.' (Testimony of Reverend Harold Clayton)

* * * * *

At the hearing on summary judgment, the trial court, in an overabundance of caution, asked appellants to list the fact issues they considered to be questions for a jury. Appellants then stated the first issue, or fact question, was whether appellants' enterprises are operated pursuant to legitimate biblical convictions of Lester Roloff; the second, whether the aforesaid convictions are legitimate and truly held and consistently practiced by Lester Roloff and those

participating in the ministries of the enterprises; the third, whether the aforesaid convictions are consistently practiced and have been the life style and the basis of all actions at the homes and ministries of the enterprises; the fourth, whether the aforesaid convictions are totally based on biblical teachings and practices dating back to the historic record of the Old Testament, have been truly held and practiced by large numbers of Christian believers through the ages to the present; the fifth, whether the Child Care Licensing Act and the minimum standards promulgated thereunder violate the aforesaid convictions when applied; the sixth, whether all of the compelling interests of the State can be adequately carried into effect and duly protected through the reasonable implementation of other State laws.

The court correctly assessed numbers 5 and 6 to be questions of law and the remainder of the alleged questions of fact were there and then agreed to by the State. Consequently, there was nothing left for the court but to apply the applicable law to the undisputed facts. *"Moore" Burger, Inc. v. Phillips Petroleum Co.*, 492, S.W.2d 934 (Tex. 1972); *Gulf, Colorado & Santa Fe Ry. Co. v. McBride*, 322 S.W.2d 492 (Tex. 1958); *Torres v. Western Casualty & Surety Co.*, 457 S.W.2d 50 (Tex. 1970).

II

Given the facts described above, the gist of appellants' case then becomes whether the control over children's homes vested in the State Department of Public Welfare as set forth in Article 695a-3 impinges on appellants' free exercise of religion guaranteed by the first amendment of the Constitution of the United States.

Even though appellant Roloff and other witnesses for appellants earnestly and vehemently assert that such a conflict exists and further, that the facts of such conflict

should be put to a jury, we hold that the testimony is nothing more than a bald conclusion entirely unsupported by any factual evidence from which a jury could draw a differing conclusion.

Thus we do not reach the cases cited by appellants[1] where the Supreme Court of the United States strikes down laws that infringe upon religious beliefs and practices; nor do we reach those cases cited by the State[2] where religious practices have been somewhat curbed where they conflict with State regulatory laws.

Section 1(b) describes the legislative intent underlying the Child Care Licensing Act as being ". . . to protect the health, safety, and well-being of the children of the State who reside in child care facilities."

To accomplish this intent, the Act establishes statewide minimum standards for the safety of such children, ensures maintenance of these standards by inspection and interviews, and regulates conditions in the facilities through a program of licensing. The entire purpose of the Act is to protect the physical and mental well-being of children residing in such facilities.

Indeed, Section 1(b) expressly states: "It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization."

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[1] *United States v. Seeger*, 380 U.S. 163 (1965); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *People v. Woody*, 394 P.2d 813 (1964); *State of Ohio v. Whisner*, 47 Ohio St. 2d. 181 (1976).

[2] *Reynolds v. United States*, 98 U.S. 145 (1878); *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

The facts of this case disclose that there is no question as to the sincerity of appellants' religious beliefs. The problem for this Court has been to ascertain wherein the exercise of these beliefs conflicts with the statute.

It then becomes apparent that in applying the statute to the undisputed facts, its provisions do not in any way conflict with appellants' beliefs, nor do they restrict the exercise of those beliefs in any way.

III

Appellant Roloff Evangelistic Enterprises filed a plea of privilege under the provisions of Article 1995, V.C.S., wherein it attempted to remove the suit from Travis County to Nueces County or to either of the two other counties in which it maintains a children's home.

Appellant Roloff Evangelistic Enterprises contends here that since the State has never filed an affidavit controverting such plea, as required by Rule 86, Tex. R. Civ. P., that the trial court erred in refusing to grant the plea and order the cause transferred.

The question then became whether the State had been served with a copy of appellant's plea of privilege as required by Rule 86, Tex. R. Civ. P., this question was put in issue and, after hearing evidence, the trial court ruled that the State had not been so served.

Appellant now argues that even though the State was not served with a copy of the plea, the court still erred in failing to grant appellant's plea of privilege. We cannot agree.

The law is well settled that when the language of a statute or rule is clear and unambiguous, its mandate must be followed precisely as written.[3]

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[3] *Franklin v. Pietzsch*, 334 S.W.2d 214 (Tex. Civ. App. 1960, writ ref. n.r.e.).

Rule 86 is as follows:

> "*. . . A copy of such plea of privilege shall be served on the adverse party or his attorney of record by actual delivery in person to him or by mailing a copy of such pleading to him by registered mail return receipt requested.* If such adverse party desires to controvert the plea of privilege, he shall within 10 days *after* he or his attorney of record received the copy of the *plea of privilege* file a controverting plea under oath, setting out specifically the grounds relied upon to confer venue of such cause on the court where the cause is pending." (Emphasis added)

We hold that Rule 86 requires the moving party to serve the adverse party with a copy of the plea. Only if the adverse party was served with a copy must the plea be controverted.

The judgment of the trial court is in all things affirmed.

Affirmed
Filed: October 5, 1977

REFUSAL OF TEXAS SUPREME COURT OF APPLICATION FOR WRIT OF ERROR

(Dated February 8, 1978)

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

Dear Sir:

You are hereby notified that the Application for Writ of Error in the case of B-7205, Roloff Evangelistic Enterprises, Inc. v. The State of Texas was this day refused. No reversible error. Justice Johnson not sitting.

Very truly yours,

GARSON R. JACKSON, *Clerk*

ORDER OF TEXAS SUPREME COURT OVERRULING MOTION FOR REHEARING

(Dated March 8, 1978)

CLERK'S OFFICE - SUPREME COURT

Austin, Texas

Dear Sir:

You are hereby notified that the Motion for Rehearing in the case of ROLOFF EVANGELISTIC ENTERPRISES v. STATE, No. B-7205 was this day overruled. Justice Johnson not sitting.

Very truly yours,

GARSON R. JACKSON, *Clerk*

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed in the Texas Court of Civil Appeals
May 22, 1978)

No. 12,589

IN THE COURT OF CIVIL APPEALS
FOR THE
THIRD SUPREME JUDICIAL DISTRICT OF TEXAS
AT AUSTIN, TEXAS

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON AND HARMON OXFORD,
Appellants,

v.

THE STATE OF TEXAS,
Appellee.

NOTICE OF APPEAL

Notice is hereby given that Roloff Evangelistic Enterprises, et. al., appellants named above, hereby appeal to the Supreme Court of the United States from an order in the Supreme Court of Texas, Case No. B-7205, overruling their Motion for Rehearing, said order entered March 8, 1978.

The Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas is requested pursuant to the Rules of the Supreme Court of the United States, Rule 12, to certify and transmit to the Clerk of the Supreme Court of the United States a full and complete copy of the record in the above styled action.

Respectfully submitted,

CLYDE JACKSON
32105 Alameda
Corpus Christi, Texas 78404

DAVID C. GIBBS, JR.
6929 West 130th Street
Suite #600
Parma Heights, Ohio 44130
Attorneys for Appellants

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal has been sent by regular U.S. Mail to the Honorable John L. Hill, Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711 this ——— day of May, 1978.

DAVID C. GIBBS, JR.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed in the Supreme Court of Texas, May 22, 1978)

No. B-7205

IN THE
SUPREME COURT OF TEXAS

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON AND HARMON OXFORD,
Petitioners,

vs.

THE STATE OF TEXAS,
Respondent.

NOTICE OF APPEAL

Notice is hereby given that Roloff Evangelistic Enterprises, et. al., petitioners named above, hereby appeal to the Supreme Court of the United States from an order in the Supreme Court of Texas, Case No. B-7205, overruling their Motion for Rehearing, said order entered March 8, 1978.

The Clerk of the Supreme Court of Texas is requested pursuant to the Rules of the Supreme Court of the United States, Rule 12, to certify and transmit to the Clerk of the Supreme Court of the United States a full and complete copy of the record in the above styled action.

Respectfully submitted,

/s/ CLYDE JACKSON
32105 Alameda
Corpus Christi, Texas 78404

/s/ DAVID C. GIBBS, JR.
6929 West 130th Street
Suite #600
Parma Heights, Ohio 44130
Attorneys for Petitioners

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal has been sent by regular U.S. Mail to the Honorable John L. Hill, Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711 this 17 day of May, 1978.

/s/ DAVID C. GIBBS, JR.

CHILD CARE LICENSING ACT OF 1975

AN ACT relating to the regulation of certain child care facilities and child placing agencies by the State Department of Public Welfare through a division of the department; authorizing advisory committees; providing for licensure, certification, or registration of certain child care facilities and child placing agencies; providing the powers and duties of the State Department of Public Welfare and the division within the department; relating to the immunization of children and the duties of the State Department of Health in regard thereto; requiring certain records; requiring certain reports by the division to the governor; providing for administrative and judicial appeals; providing extent of application of the Administrative Procedure and Texas Register Act; providing sanctions and penalties for certain violations; providing enforcement procedures; providing a saving clause and an effective date; repealing Section 8(a) of the Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS;

Section 1. (a) TITLE. This Act may be cited as the Child Care Licensing Act.

(b) LEGISLATIVE INTENT AND DECLARATION OF PURPOSE AND POLICY. It is the legislative intent to protect the health, safety, and well-being of the children of the state who reside in child care facilities. Toward that end, it is the purpose of this Act to establish statewide minimum standards for the safety and protection of children in child care facilities, to insure maintenance of these standards, and to regulate such conditions in such facilities through a program of licensing. It shall be the policy of the state to insure protection of children under care in

child care facilities, and to encourage and assist in the improvement of child care programs. It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization.

Sec. 2. DEFINITIONS. As used in this Act:

(1) "Department" means the State Department of Public Welfare.

(2) "Division" means the division established or designated by the State Department of Public Welfare to carry out the provisions of this Act.

(3) "Child care facility" means a facility providing care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit, and whether or not the facility makes a charge for the service offered by it.

(4) "Child" means an individual under 18 years of age.

(5) "Person" includes an individual, a public or private agency, an association, or a corporation.

(6) "Child caring institution" means a child care facility which provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(7) "Foster group home" means a child care facility which provides care for 7 to 12 children for 24 hours a day.

(8) "Foster family home" means a child care facility which provides care for not more than 6 children for 24 hours a day.

(9) "Day care center" means a child care facility which provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(10) "Group day care home" means a child care facility which provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(11) "Registered family homes" means a child care facility which regularly provides care in the caretaker's own residence for not more than 6 children under 14 years of age, excluding the caretaker's own children, and which provides care after school hours for not more than 6 additional elementary school siblings of the other children given care, provided that the total number of children including the caretaker's own does not exceed 12 at any given time.

(12) "Family day home" means a child care facility which provides care for not more than 6 children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of such children.

(13) "Agency home" means a private home providing care for not more than 6 children, which is used only by a licensed child placing agency, and which meets division standards.

(14) "Child placing agency" means a person other than the natural parents or guardian of the child who

plans for the placement of or places a child in an institution, agency home, or adoptive home.

(15) "State of Texas" or "state" does not include political subdivisions of the state.

(16) The term "facilities" without the modifier "child care" includes child care facilities and child placing agencies.

Sec. 3. DIVISION. (a) The State Department of Public Welfare shall establish or designate a division within the department for the licensure and regulation of child care facilities and child placing agencies and the enforcement of the provisions of this Act and the regulations and standards adopted pursuant thereto and such other duties and responsibilities as the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division an individual qualified in one of the following ways:

(1) by meeting the qualifications required of a child care administrator by Chapter 231, Acts of the 63rd Legislature, Regular Session, 1973 (Article 695a-1, Vernon's Texas Civil Statutes);

(2) by holding a graduate degree in social science or law and having five years administrative experience in a field related to child care; or

(3) by having 10 years' experience in a field related to child care, at least five of which must be administrative.

(c) The department shall employ sufficient personnel and shall provide adequate training to the persons employed to carry out the provisions of this Act.

(d) The director may divide the state into regions for the purposes of administering this Act.

Sec. 4. REQUIRED LICENSE. (a) No person may operate a child care facility or child placing agency unless he holds a valid license issued by the division.

(b) This section does not apply to:

(1) state-operated facilities;

(2) agency homes;

(3) facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or individuals in charge of the children are attending church services, shopping, or engaging in other activities on or near the premises, which with respect to churches or other religious institutions shall include but not be limited to Sunday school, retreats, or weekly catechism or other schools or classes for religious instruction;

(4) schools or classes for religious instruction conducted by churches during the summer months for not more than two weeks, known as vacation Bible schools;

(5) youth camps licensed by the State Department of Health;

(6) hospitals licensed by the Texas Department of Mental Health and Mental Retardation or the State Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operate primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two and does not provide custodial care for more than one hour during the hours before or after the

customary school day, and are members of an organization which promulgates, publishes, and requires compliance with the health, safety, fire, and sanitation standards at least equal to those required by state, municipal, and county health, safety, fire, and sanitation codes;

(9) kindergarten or preschool educational programs operated as part of the public schools of this state or of private schools accredited by the Central Education Agency that offer educational programs through grade six and that do not provide custodial care during the hours before or after the customary school day.

(10) registered family homes as defined in Section 2 of this Act.

(c) In the event that a child caring institution operates facilities that are noncontiguous, but of a near proximity and demonstratable singleness of operation (as determined by patterns of staffing, finance, administrative supervision, and programs) a single license may be issued to the institution noting the addresses and facilities appropriate.

Sec. 5. RULES, REGULATIONS, AND STANDARDS. (a) The department shall promulgate reasonable rules and regulations to carry out the provisions of this Act.

(b) The department shall promulgate minimum standards for child care facilities covered by this Act which will:

(1) promote the health, safety, and welfare of children attending any facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) insure adequate supervision of the children by capable, qualified, and healthy personnel;

(4) insure adequate and healthy food service, where it should be offered;

(5) prohibit racial discrimination by child care facilities; and

(6) include procedures by which parents and guardians are given opportunity for consultation in formulation of the children's educational and therapeutic programs.

(c) In promulgating minimum standards for child care facilities, the department should take cognizance of the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child care institutions must require an intake study before a child is placed in an institution. The study may be conducted at a community mental health and mental retardation center.

(d) In promulgating minimum standards the department may take cognizance of, and may differentiate with respect to, the following child care facilities: child caring institutions, foster homes, day care centers, group day care homes, family day homes, registered family homes, and agency homes.

(e) The department shall promulgate minimum standards for child placing agencies.

(f) The department shall promulgate standard forms for applications and inspection reports.

(g) The department shall promulgate a standard procedure for receiving and recording complaints and a standard form for complaints.

(h) Before adoption of minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child Care Facilities for its review and comment and shall send a copy of the proposed standards to each licensee covered by the proposed mini-

mum standards at least 60 days prior to the effective date of the proposed standards in order to enable the persons to review the proposed standards and make written suggestions to the department and the council.

(i) A comprehensive review of all standards, rules, and regulations must be made at least every six years.

(j) The department shall not regulate or attempt to regulate or control the content or method of any instruction or the curriculum of a school sponsored by a church or religious organization.

(k) The department may in specific instances waive the compliance with a minimum standard on a determination that the economic impact is sufficiently great to make such compliance impractical.

Sec. 6. RULES RELATING TO IMMUNIZATION OF CHILDREN. (a) The department shall promulgate rules and regulations relating to immunization of children admitted to facilities.

(b) The rules shall require the immunization of each child at an appropriate age against diphtheria, tetanus, poliomyelitis, rubella, and rubeola and a test for tuberculosis, and the immunization must be effective on the date of first entry into the facility; provided, however, a child may be provisionally admitted if he has begun the required immunizations and if he continues to receive the necessary immunizations as rapidly as is medically feasible.

(c) The State Department of Health shall promulgate rules and regulations relating to the provisional admission of children to facilities. The State Board of Health may modify or delete any of the immunizations listed in this section or may require immunization against additional diseases as a requirement for admission to facilities; but no form of immunization shall be required for a child's admission to a facility if the person applying for the child's

admission submits either an affidavit signed by a doctor in which it is stated that, in the doctor's opinion, the immunization would be injurious to the health and well-being of the child or of any member of his family or household, or an affidavit signed by the parent or guardian of the child stating that the immunization conflicts with the tenets and practice of a recognized church or religious denomination of which the applicant is an adherent or member.

(d) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(e) The State Department of Health shall provide the required immunizations to children in areas where no local provision exists to provide these services.

Sec. 7. INSPECTION. (a) An authorized representative of the division may visit a child care facility or child placing agency during the hours of operation for purposes of investigation, inspection, and evaluation.

(b) The division shall inspect all facilities licensed or certified by the division at least once a year and may inspect other facilities as necessary. At least one of the yearly visits must be unannounced, and all may be unannounced.

(c) An investigation visit must be made if a complaint is received by the division. The division representative must notify the director or authorized representative of the director of the facility being investigated that a complaint is being investigated. The results of the investigation must be reported in writing to the director.

(d) The division may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields.

Sec. 8. CONSULTATION. (a) The department shall offer consultation to potential applicants, applicants, licensees, and holders of certification in meeting and maintaining standards for licensing and certification and in achieving programs of excellence related to the care of children served.

(b) The department shall offer consultation to prospective and actual users of facilities.

Sec. 9. ADVISORY OPINIONS AND DECLARATORY ORDERS. (a) The director of the division may give advisory opinions on compliance of planned facilities or planned changes in existing facilities with division rules, regulations, and minimum standards.

(b) If a written opinion signed by the director of the division and the division representative administering this Act in a divison region is acted on by an applicant or licensee, it is binding upon the division as a declaratory order.

Sec. 10. RECORDS. (a) All persons operating a licensed or certified child care facility or child placing agency shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) All persons operating a licensed facility, other than a child care facility which provides care for less than 24 hours a day, or an agency home, shall have its books audited annually by a certified public accountant and include a copy of the accountant's statement of income and disbursements with each application for a license.

Sec. 11. ISSUANCE OF LICENSE. (a) A person desiring to operate a child care facility or child placing agency shall apply in writing to the division for a license.

(b) The division shall supply the applicant with the

appropriate application forms and a copy of the appropriate minimum standards.

(c) On receipt of the application, the division shall conduct an investigation of the applicant and the plan of care for children.

(d) The division shall complete its investigation and render a decision on the application within two months after receipt of the application.

(e) If the division determines that the facility has reasonably satisfied all requirements, it shall issue a license.

(f) In issuing a license, the division may impose restrictions on the facility, including, but not limited to, the number of children to be served and the type of children to be served.

(g) A variance of an individual standard set forth in the standards may be granted for good and just cause by the division.

(h) A license applies only to the location stated on the application and license issued and is not transferable from one person to another or from one place to another. If the location of the facility is changed or the owner of the facility is changed, the license is automatically revoked.

(i) The licensee must display the license in a prominent place at the facility.

(j) Prior to expiration of its license, a facility may apply for a new license in accordance with the provisions of this Act and the rules and regulations promulgated by the division. The application must be completed and acted on prior to the expiration of a license. Evaluation to determine if the applying facility meets all requirements must include a specified number of visits to the facility and review of all required forms and records.

Sec. 12. PROVISIONAL LICENSE. (a) The division shall issue a provisional license to a facility whose plans meet the department requirements but which is (1) not currently operating, (2) not licensed for the location stated in the application, or (3) changing ownership.

(b) A provisional license is valid for six months from the date of issuance and is non-renewable.

Sec. 13. BIENNIAL LICENSE. (a) A biennial license will be issued if the division determines that the facility meets all requirements on a continuing basis. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

(b) A biennial license shall be valid for two years.

Sec. 14. CERTIFICATION AND REGISTRATION. (a) Child care facilities and child placing agencies operated by the state, and registered family homes, are exempt from the licensing requirements of this Act, but state operated facilities must receive certification of approval from the division and registered family homes must be registered.

(b) To be certified, the facilities must meet all department standards, rules and regulations, and provisions of this Act that apply to licensed facilities of the same category. The operator of a certified facility must display the certification in a prominent place at the facility. Certification of approval must be renewed every two years.

(c) To be registered, the facility must meet department standards, rules, regulations, and provisions of this Act that apply to registered facilities.

Sec. 15. AGENCY HOMES. (a) An agency home is exempt from the licensing requirements of this Act but shall be considered part of the child placing agency operating the home when the agency is licensed.

(b) The agency homes must meet all department

standards, rules and regulations, and provisions of this Act that apply to child care facilities caring for a similar number of children for a similar number of hours each day.

(c) The operator of the licensed agency must display a copy of the license in a prominent place at an agency home used by the agency.

(d) If an agency home fails to meet the requirements of Subsection (b) of this section, the division shall suspend or revoke the license of the child placing agency.

Sec. 16. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child Care Facilities is hereby established.

(b) The commissioner of the department shall appoint 15 citizens to serve as members of the committee for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of the children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields which are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and regulations and minimum standards relating to child care facilities and child placing agencies promulgated by state agencies, and shall advise the department and the division, the council, and state agencies on problems of child care facilities and child placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Sec. 17. ANNUAL REPORT. (a) The division shall present to the governor, lieutenant governor, and members of the legislature an annual report of its activities.

(b) The annual report must include:

(1) a report by regions of applications; provisional licenses issued, denied, suspended, and revoked; licenses issued, denied, suspended, and revoked; emergency closures and injunctions; and compliance of state operated agencies with certification requirements;

(2) a summary of the amount and kinds of in-service training and other professional growth opportunities provided to division staff;

(3) a summary of training and other professional growth opportunities offered to child care facilities staff;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be made available to any citizen of the state upon request.

Sec. 18. SUSPENSION. (a) If a facility has temporarily suspended operations but has definite plans for renewing operations within the time limits of the issued license, the division may suspend the license.

(b) If the division finds repeated non-compliance with standards that do not endanger the health or safety of the children, the division has the option of suspending the license for a definite period of time instead of denying

or revoking the license. In order to qualify for suspension under this subsection, the facility must:

(1) show it can meet the standards within the suspension period, and

(2) suspend its operations.

(c) If a facility does not comply with standards after the suspension, the division must deny or revoke its license.

Sec. 19. DENIAL OR REVOCATION. (a) If the division finds that a facility does not comply with the provisions of this Act, the department standards, department rules and regulations, or the specific terms of a license or certification, it must deny or revoke the license or certification of approval.

(b) The division must notify the person operating or proposing to operate the facility of the reasons for the denial or revocation and the person's right of appeal within 30 days of receipt of the director's notification.

(c) If the person wishes to appeal, he must notify the director by certified mail within 30 days and must state in the notification the reasons against denial or revocation. The person must send a copy of the notification to the assigned division representative.

(d) Within two weeks following the date the appeal notification was mailed, the director shall notify the person that the request for an appeal hearing is denied, or he shall appoint an advisory review board to hear the appeal.

(e) Within two weeks following notification to the person that an advisory review board will hear his case, the director shall appoint five of the person's peers to an advisory review board and shall set a date for the hearing. The date for the hearing must be within four weeks following the date of the appointment of the members.

(f) The advisory review board shall hear the appeal and render an advisory opinion to the director within one

week of the hearing. The board members shall receive actual travel expenses and state per diem for each day of the hearing.

(g) The advisory opinion will be reviewed by a committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this Act in the region in which the facility is located. The committee shall render a decision within two weeks after receiving the advisory opinion and shall notify by certified mail the person of its decision.

(h) Within 30 days after receipt of the committee's decision, the person whose license has been denied or revoked may challenge the decision in a suit filed in a district court of Travis County or the county in which the facility is located. The trial shall be de novo.

(i) On request by a person challenging a division decision in a court suit, the division shall supply him with a copy of the verbatim transcript of his advisory review board hearing, at his expense. Records of the hearing shall be kept for one year after a final decision is rendered.

(j) Unless the division uses the procedures set forth in Section 22 or 23 of this Act, a person may continue to operate a facility during an appeal of the denial or revocation of its license.

Sec. 20. The Administrative Procedure Act, S. B. No. 41, Acts of the 64th Legislature, Regular Session, 1975, applies to all procedures and proceedings under this Act, except where it is contrary or inconsistent with the provisions of this Act, in which case the provisions of this Act shall govern.

Sec. 21. CLOSURE OF A FACILITY. (a) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a facility

other than a state-operated facility that places the children in the facility in immediate peril, it may close the facility and place the children attending the facility in another facility.

(b) A division representative finding conditions that place children in a facility in peril shall immediately contact the director of the division and request the director or his designee to immediately inspect the facility for verification of the conditions.

(c) If the division finds any violation of this Act or the department's minimum standards or rules and regulations by a state operated facility that threatens serious harm to the children in the facility, the division representative shall immediately report the finding to the governor and the commissioner of the department.

(d) Closure under this section is an emergency measure. After closing a facility, the division must seek an injunction against continued operation of the facility as prescribed in Section 22 of this Act.

Sec. 22. INJUNCTIVE RELIEF. (a) Whenever it appears that a person has violated or is violating or threatening to violate any provision of this Act or of any rule, regulation, or standard of the department, the division may cause a civil suit to be instituted in a district court of Travis County or in the county in which the facility is located, for injunctive relief, including temporary restraining orders, to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalties. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of

any rule, regulation, standard, or order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the division, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Sec. 23. CIVIL PENALTY. Any person who violates any provision of this Act or rule, regulation, or standard of the department which threatens serious harm to the children in the facility, or who violates any provision of this Act or rule, regulation, or standard of the department three or more times within a period of a year, or who operates a facility without a license or certification as required under this Act, or who places a public advertisement for an unlicensed facility, is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper. Civil penalties shall be cumulative and in addition to the remedies of injunction and criminal penalties provided in this Act.

Sec. 24. CRIMINAL PENALTY. (a) A person operating a child care facility or child placing agency without a license is guilty of a Class B misdemeanor.

(b) A person placing a public advertisement for an unlicensed facility is guilty of a Class C. misdemeanor.

Sec. 25. PRIOR ISSUED LICENSES. Licenses issued before the effective date of this Act remain valid for a period not to exceed two years from the effective date of this Act.

Sec. 26. REPEALER. Section 8(a), The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes), is repealed.

Sec. 27. EFFECTIVE DATE. This Act shall take effect January 1, 1976.

Sec. 28. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Supreme Court, U. S.
FILED
JUL 19 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

* * *

NO. 77-1737

* * *

ROLOFF EVANGELISTIC ENTERPRISES, INC., RAYMOND WEATHERFORD, MRS. RAYMOND WEATHERFORD, JACK PATTERSON AND HARMON OXFORD,

Petitioners,

V.

THE STATE OF TEXAS,

Respondent

* * *

MOTION TO AFFIRM

* * *

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SUBJECT INDEX

	Page
QUESTION PRESENTED	1
STATUTE INVOLVED	2
STATEMENT	2
ARGUMENT	3

INDEX OF AUTHORITIES

CASES	PAGE
Cantwell v. Connecticut 310 U.S. 206, 303 (1940)	3
Prince v. Massachusetts 321 U.S. 158, 168, 169 (1944)	4
Reynolds v. United States 98 U.S. 145, 164 (1878)	3
Wisconsin v. Yoder 406 U.S. 212	4
STATUTES	
Article 695a-3, V.T.C.S.	2, 4
CONSTITUTION	
First Amendment	1, 3, 4

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* * *

MOTION TO AFFIRM

* * *

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Appellee, the State of Texas, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the final judgment of the Supreme Court of Texas be affirmed on the ground that the federal question is so unsubstantial as not to warrant further argument.

QUESTION PRESENTED

Does the Texas Child Care Licensing Act, as construed and applied, violate the First Amendment to the Constitution of the United States by permitting state regulation of child care institutions operated by religious institutions.

STATUTE INVOLVED

This appeal raises the validity of the Texas Child Care Licensing Act of 1975, Article 695a-3, Vernon's Texas Civil Statutes. See the full text of the Texas Child Care Licensing Act of 1975 in an Appendix to Appellant's Jurisdictional Statement.

STATEMENT

This appeal stems from the grant of summary judgment of the 126th District Court of Travis County which ordered Petitioner Roloff Evangelistic Enterprises, et al, to secure state licenses to operate its child care homes. The licenses were required pursuant to the provisions of the Child Care Licensing Act, Article 695a-3, Vernon's Texas Civil Statutes, which requires in part that:

> "It is the legislative intent to protect the health, safety, and well-being of the children of the state who reside in child care facilities. Toward that end, it is the purpose of this Act to establish statewide minimum standards for the safety and protection of children in child care facilities through a program of licensing... It is the further legislative intent that the freedom of religion of all citizens shall be inviolate. Nothing in this Act shall give any governmental agency jurisdiction or authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of any religious instruction or the curriculum of a school sponsored by a church or religious organization."

The Act further provides that:

> "[N]o person may operate a child care facility or child placing agency unless he holds a valid license. . ."

Petitioners contended below and contend here that they were not amenable to the licensing provisions because Roloff Evangelistic Enterprises is a religious organization, and so their child care institutions are not subject to state regulation because such regulation would impinge upon the free exercise of religion as guaranteed by the First Amendment of the Constitution of the United States.

The summary judgment in favor of Respondent State was affirmed by the Court of Civil Appeals for the Third Judicial District and Petition for Writ of Error was denied by the Supreme Court of Texas. This appeal followed.

ARGUMENT

Appellants assert that there are four substantial federal questions. In actuality, there exists only the question of whether a state statute requiring state regulation of child care institutions operated by religious institutions is in violation of the First Amendment to the Constitution of the United States.

Appellants' contention that there can be no State regulation of a child care institution which is operated by a religious organization is patently without merit and approaches the frivolous.

Under the First Amendment to the Constitution of the United States, the freedom of Petitioners to *believe* as they may see fit remains inviolate, but their freedom to *act* in society is not inviolate and is subject to reasonable regulation by a state (or the United States) for the protection of the society which extends the right of religious freedom. *Cantwell v. Connecticut*, 310 U.S. 206, 303 (1940); *Reynolds v. United States*, 98 U.S. 145, 164 (1878). Moreover, society's interest in the reasonable regulation of acts performed in accordance with

religious beliefs is broader and greater where the welfare and safety of children are involved. *Prince v. Massachusetts*, 321 U.S. 158, 168, 169 (1944).

In any case, where the interests of freedom of religion and the public welfare clash, the propriety of governmental regulation must be examined in light of the two-pronged test enunciated by *Wisconsin v. Yoder*, 406 U.S. 212 (1972), at page 214 of the opinion:

> "...it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause."

The regulation of child care institutions as provided in Article 695a-3 meets either test since

(1) such regulation cannot be said to "interfere with the practice of a legitimate religious belief", and

(2) the "state interest" in the case of welfare of children residing in child care institutions is of sufficient magnitude to override the interest claiming protection under the First Amendment.

Appellants' claim that the regulation of its child care centers infringe on First Amendment rights is without merit. The judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonny Zwiener, Assistant Attorney General of Texas, hereby certify that I have served the above and foregoing Reply to Application For Writ of Error by depositing a copy of the same in the United States Mail, certified mail, return receipt requested, addressed to Mr. Clyde Jackson, 32105 Alameda, Corpus Christi, Texas 78404, and Mr. David C. Gibbs, Jr. Gibbs, Craze and Thompson, 6929 W. 130th Street, Suite 600, Parma Heights, Ohio 44130, on this the ___ day of _____, 1978.

LONNY F. ZWIENER